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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,219	02/25/2004	Randal J. Monforton	5558CON (9649/150)	3027

7590 10/20/2004

John O'Toole  
General Mills, Inc.  
1 General Mills Boulevard  
P.O. Box 1113  
Minneapolis, MN 55440

EXAMINER

LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/786,219	Applicant(s) MONFORTON ET AL.	
	Examiner Philip H Leung	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 15-40 and 43-45 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 10-14, 41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. The drawings filed 2-25-2004 are acceptable.
2. Claims 1-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,660,983. Although the conflicting claims are not identical, they are not patentably distinct from each other because this continuation application claims an expandable microwave package having substantially the same features as claimed in the parent patent with the claims being broader in scope. For instance, compare claim 8 with claim 2 of the parent patent.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (US 6,066,346) or General Mills, Inc. (WO 01/05678) (both cited in the parent application).

Hunt shows a microwave food package 18 including first and second walls 22d and 22e and a seal 40 with a peelable closure portion 40a (see Figures 1, 2 and 8-12 and col. 4, line 21 - col. 10, line 50). General Mills, Inc. shows a microwave food package 18 including first and second walls 22d and 22e and a peelable seal 40 (see Figures 1-6 and page 4, line 25 - page 16, line 25). The exact structure of the peelable seal element would be a matter of engineering variations of the ones shown in Hunt of General Mills, Inc. as they have the same function and obvious to an ordinary artisan as a mere engineering expediency.

6. Claims 1-5 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (US 6,066,346) or General Mills, Inc. (WO 01/05678), in view of Kim (US 4,936,464) (cited in the parent application).

Hunt or General Mills, Inc. discloses the claimed invention except for the explicit showing that the adhesive is a wet seal type. Kim shows that it is old and well known in the art

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of sealable packages to use wet adhesive for tightly sealing the package (see Figures 1-7 and col. 2, line 49 - col. 3, line 47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hunt or General Mills, Inc. to use any well known packaging adhesives including wet seal adhesive for better package sealing results, in view of the teaching of Kim.

7. Claims 8, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (US 6,066,346) or General Mills, Inc. (WO 01/05678), in view of Nakano (JP 4-18273) or Mizuno (US 5,989,608) (both cited in the parent application).

Hunt or General Mills, Inc. discloses the claimed invention except for the explicit showing the use of a plurality of parallel bands as the seal. Nakano or Mizuno shows that it is old and well known in the art of sealable packages to use a seal having plural bands for forming the sealing tape (see Nakano, Figures 1-7 and the English abstract and Mizuno, Figures 3A - 10B and col. 4, line 50 - col. 7, line 35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hunt or General Mills, Inc. to use any well known adhesive tape including seal with plural parallel bands for better package sealing results, in view of the teaching of Nakano or Mizuno. In regard to claims 10 and 43, Nakano also shows that it is old and well known in the art of sealable packages to use a seal having V-shaped portion for forming the sealing tape.

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8. Claims 22-28 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (US 6,066,346) or General Mills, Inc. (WO 01/05678), in view of Burdette (US 4,596,713) or Komiya et al (JP 10-230978) (both cited in the parent application).

Hunt or General Mills, Inc. discloses the claimed food container except for the use of a further chamber in communication with the interior of the package of the container. Burdette shows that it is old and well known in the art of food cooking containers to use a chamber within the package for containing a flavoring separated from the food before heating and in communication with the interior during or after heating (see Figures 2-6 and col. 7, line 28 - col. 10, line 8). Komiya also shows that it is old and well known in the art of food cooking containers to use a seal separating the package into two chambers but in communication with each other (see Figures 1-4 and the English abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hunt or General Mills, Inc. to a chamber within the interior of the package for containing additives to the food or for better venting arrangement to achieve better cooking results, in view of the teaching of Burdette or Komiya.

9. Claims 29-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (US 6,066,346) or General Mills, Inc. (WO 01/05678), in view of Komiya (US JP 10-230978) (cited in the parent application) or Nakano (JP 4-18273).

Hunt or General Mills, Inc. discloses the claimed invention except for the explicit showing the use of a seal having V-shaped portion. Komiya or Nakano shows that it is old and well known in the art of sealable packages to use a seal having V-shaped portion for forming the

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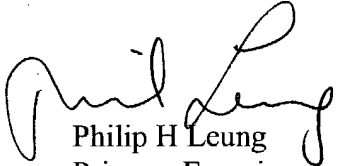
sealing tape (see Komiya, Figures 4(b) and the English abstract and Nakano, Figures 5-8 and the English abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hunt or General Mills, Inc. to use any well known adhesive tape including seal with V-shaped portion for better package sealing results, in view of the teaching of Komiya or Nakano.

10. Claims 6, 7, 9-14, 41 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (703) 308-1710.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (703) 305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Philip H Leung  
Primary Examiner  
Art Unit 3742

P.Leung/pl  
10-15-2004